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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,166	04/29/2002	Jochen Wurtz	514413-3896	4932
20999	7590	05/12/2004	EXAMINER	
FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151			CLARDY, S	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 05/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/937,166	Applicant(s) WURTZ ET AL.	
	Examiner S. Mark Clardy	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 14-35 are pending in this application which has been filed under 35 USC 371 as the national stage of international application PCT/EP00/02207, filed March 13, 2001.

Applicants' claims are drawn to a surfactant/solvent system which may be combined with pesticidal/herbicidal materials such as desmedipham, phenmedipham, or ethofumesate (e.g., claim 25), comprising:

- b1) an aromatic-based surfactant(s)¹
- b2) organic phosphate or phosphonate solvents² selected from:
 - b2.1) phosphoric acid esters
 - b2.2) phosphonate acid diesters

and additional optional materials. It is noted that in applicants' response, the inventive compositions are described as being "liquid formulations, preferably in one phase", and that claim 14 requires that the b2.1 or b2.2 components do not form micellar aggregates in aqueous solution. While the limitation may indicate that single phase compositions, rather than emulsions, are preferred, the claims do not limit the formulations to single phase compositions inasmuch as other components are not restricted as to whether they are capable of forming micelles.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

¹ Claims 15, 16: dodecylbenzenesulfonate or (poly(alkoxylated))(alkyl)phenols such as polyEO-: phenol, triisobutylphenol, nonylphenol, tristyrylphenol

² claim 19+: tri(butyxyethyl)phosphate

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 14-16 and 18-35 are rejected under 35 U.S.C. 102(a), (b), and (e) as being anticipated by Carpenter (US 5,674,517).

Carpenter teaches pesticide composition emulsifiers consisting essentially of an amine salt of a phenoxypolyalkoxylated sulfate surfactant (compound I), in combination with a nonionic surfactant (abstract). Among the disclosed pesticidal agents which may be combined with the surfactant formulation are various herbicides, including phenmedipham (col 5, lines 30-31), at rates ranging from 0.5 to about 50% (lines 61 – 64). Tributoxyethyl phosphate is disclosed among various other solvents (col 6, lines 1-19), and is used in Example 1 in a formulation with the insecticide permethrin, and polyalkoxylated nonylphenol as the nonionic surfactant (lines 46-60), along with the phenoxypolyalkoxylated sulfate component. The additional components in claim 17 are not taught in Carpenter.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Carpenter, Heinrich (PCT WO 91/06215), and Bertrand (FR 2 599 593).

Carpenter has been discussed above.

Heinrich, again, teaches herbicidal emulsion concentrate (EC) compositions comprising, among other components, phosphoric acid esters of aliphatic mono-, di-, or polyalcohols (p. 5, lines 1-15, organic (aromatic) solvents (lines 32-35), and additional components such as alkylphenolpolyglycol ether (i.e., polyalkoxylated alkylphenols, p. 6, line 6).

Bertrand, again, teaches stabilized biscarbamate herbicidal compositions comprising the active agents, tributyl phosphate, an organic solvent, and a nonionic surfactant (abstract). The herbicides include phenmedipham and desmedipham (p. 1, lines 15-21) and may be combined with polyalkoxyphenol phosphate ester surfactants (p. 4), and alkylphenols, polyalkylphenols, or polyalkoxylated (poly)alkylphenols (p. 3).

One of ordinary skill in the art would be motivated to combine these references because they disclose the utility of polyalkoxylated alkylphenol surfactants in formulating pesticidal/herbicidal compositions.

Thus, it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to have combined applicants' surfactants and solvents in

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a single composition for use in herbicidal formulations because the prior art teaches that these components are known in the art of herbicide formulation. Further, it is conventional in the art to combine surfactants and solvents with herbicides in order to enhance their uptake into target plants.

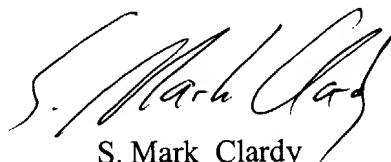
No unobvious or unexpected results are noted; no claim is allowed.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is 571-272-0611. The examiner can normally be reached on 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


S. Mark Clardy
Primary Examiner
Art Unit 1616

May 10, 2004